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# Nancy Johnson Order on Certain Discovery Related Motions, Objections and Requests

Melvin Westmoreland  
*Fulton County Superior Court*

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA**

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NANCY JOHNSON, Individually, and as  
Executor of the Estate of Dennis L. Johnson,  
and as Beneficiary of the Nancy Johnson  
Family Trust, SHANNON JOHNSON, as  
Beneficiary of the Dennis Johnson Family  
Trust, THE DENNIS AND NANCY  
JOHNSON CHARITABLE REMAINDER  
UNITRUST, THE DENNIS L. AND NANCY  
JOHNSON FAMILY FOUNDATION, INC.,  
and DNJ INVESTMENTS, LLC,

Plaintiffs,

v.

KEVIN TAYLOR, Individually, and as  
Trustee of the Nancy Johnson Family Trust,  
and Trustee of the Dennis Johnson Family  
Trust, and NICOLE TAYLOR, Individually,  
and as Trustee of the Nancy Johnson Family  
Trust, and Trustee of the Dennis Johnson  
Family Trust,

Defendants.

CIVIL ACTION NO.  
2017CV296139

Business Case Div. 3

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**ORDER ON CERTAIN DISCOVERY RELATED  
MOTIONS, OBJECTIONS AND REQUESTS**

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The above styled action is before the Court on a number of discovery related motions, objections and requests, *to wit*: (1) Plaintiffs' Motion to Compel Discovery; (2) Plaintiffs' Motion to Compel Non-Party Responses; (3) Objection of Non-Party Brooks Cook & Associates, LLC to Plaintiff's Request for Production of Documents to Non-Party Brooks, Cook & Associates, LLC; (4) Defendants' Objection to Plaintiffs' Request for Production of

Documents to Non-Party Brooks, Cook & Associates, LLC (which includes a request to quash Plaintiffs' discovery request); (5) Defendants' Objection to Plaintiffs' Request for Production of Documents to Non-Party FisherBroyles, LLP (which includes a request to quash Plaintiffs' discovery request); (6) Defendants' Objection to Plaintiffs' Request for Production of Documents to Non-Party, Tiffany Corn (which includes a request to quash Plaintiffs' discovery request); (7) Defendants' Objection to Plaintiffs' Request for Production of Documents to Non-Party Levin & Reidling, LLC (which includes a motion that the Court find the requested documents are protected from disclosure); (8) Defendants' Objection to Plaintiffs' Request for Production of Documents to Non-Party Regus Business Centre, LLC, Regus Equity Business Centers, LLC, and Regus Management Group, LLC (which includes a request to quash Plaintiffs' discovery request); (9) Defendants' Objection to Plaintiffs' Request for Production of Documents to Non-Party, True I.T., Inc. (which includes a request to quash Plaintiffs' discovery request); (10) Response of Fisherbroyles, LLP to Plaintiffs' Motion to Compel, and Cross-Motion for Sanctions Against Plaintiffs; and (11) Plaintiffs' Motion to Compel Non-Party FisherBroyles, LLP's Response to Second Request for Production of Documents.<sup>1</sup> Having considered the entire record, the Court finds as follows<sup>2</sup>:

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<sup>1</sup> Additionally, Plaintiffs filed a Motion for Expedited Response Time and Expedited Hearing related to their Motion to Compel Discovery filed Aug. 20, 2018 and a Motion for Expedited Response Time and Expedited Hearing related to their Motion to Compel Non-Party Responses filed Aug. 27, 2018. The Court denied the request for expedited briefing of Plaintiffs' discovery motions via email to counsel on Sept. 10, 2018. Plaintiffs' counsel subsequently withdrew Plaintiffs' request for a hearing on the foregoing motions and indicated Plaintiffs' intent to file a reply brief in support of their Motions to Compel. The Court thereafter notified counsel that it would take the discovery motions under advisement upon full briefing as requested. Insofar as Plaintiffs filed reply briefs regarding their Motions to Compel on Nov. 16, 2018 and Non-Party FisherBroyles submitted a sur-reply on Nov. 28, 2018, the Court deems the discovery motions and requests discussed herein fully brief and ripe for ruling, except as otherwise outlined in Part E, *infra*.

<sup>2</sup> As used herein and where appropriate: the Dennis and Nancy Johnson Charitable Remainder Unitrust will be referred to as the "CRUT"; the Dennis L. and Nancy Johnson Family Foundation, Inc. will be referred to as the "Family Foundation"; DNJ Investments, LLC will be referred to as "DNJ"; Welcome to Paradise, LLC will be referred to as "WTP"; the Nancy Johnson Family Trust will be referred to as the "NJ Trust"; the Dennis Johnson Family Trust will be referred to as the "DJ Trust"; and Dothan Guest Management Holdings, LLC will be referred to as "DGMH".

## A. General Scope of Discovery

With respect to the general scope of discovery, O.C.G.A. §9-11-26(b)(1) provides:

**Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence...**

(Emphasis added).

“[I]n the discovery context, courts should and ordinarily do interpret ‘relevant’ very broadly to mean any matter that is relevant to anything that is or may become an issue in litigation.” Bowden v. The Med. Ctr., Inc., 297 Ga. 285, 291, 773 S.E.2d 692, 696 (2015) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)) (internal quotations omitted). The powers of the trial court to control the time, place, scope and financing of discovery are construed broadly. *See* Orkin Exterminating Co. v. McIntosh, 215 Ga. App. 587, 589, 452 S.E.2d 159, 162 (1994), *disapproved of on other grounds by* Chrysler Grp. LLC v. Walden, No. S17G0832, 2018 WL 1323992 (Ga. Mar. 15, 2018); Bicknell v. CBT Factors Corp., 171 Ga. App. 897, 899, 321 S.E.2d 383, 385 (1984). Further, “an evasive or incomplete answer is to be treated as a failure to answer.” O.C.G.A. § 9-11-37(a)(3). *See* Stephens v. Howle, 132 Ga. App. 92, 93 207 S.E.2d 632, 633-34 (1974) (holding that trial court did not abuse its discretion in finding that plaintiff’s responses to interrogatories were invasive or incomplete where the plaintiff failed to respond fully in “some of the answers”).

## **B. PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

Plaintiffs seek to compel the production of complete responses to all of their remaining discovery requests and further ask the Court to order Defendants to: withdraw all objections to certain requests for documents; produce all requested documents organized in response to each request; provide waivers to FisherBroyles, LLC ("FisherBroyles") and Brooks Cook & Associates, LLC ("Brooks Cook") regarding non-party discovery requests served upon those entities; provide authorization to Merrill Lynch for Nancy Johnson to access DNJ's bank records; respond to Plaintiffs' good faith letter regarding the parties' discovery dispute; produce native versions of various documents requested; and pay Plaintiffs their attorneys' fees incurred related to the motion.

### ***(1) Timeliness of Defendants' Discovery Responses & Waiver of Objections***

According to Plaintiffs' motion, on May 24, 2018, and June 6, 2018, Plaintiffs served eleven requests for documents (generally referred to herein as "RPDs") upon Defendants and WTP<sup>3</sup>:

1. Plaintiff Shannon Johnson's First Continuing Request for Production of Documents to Defendant Kevin Taylor served on May 24, 2018 (to which Kevin Taylor responded on July 26, 2018);
2. Plaintiff Shannon Johnson's First Continuing Request for Production of Documents to Defendant Nicole Taylor, served on May 24, 2018 (to which Nicole Taylor responded on July 26, 2018);
3. Plaintiff Nancy Johnson's First Continuing Request for Production of

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<sup>3</sup> On May 18, 2018, this Court entered an Order on Pending Motions that, *inter alia*, denied Plaintiffs' Motion for Temporary Restraining Order and Interlocutory Injunction ("Motion for TRO") but stated in a footnote: "Given the parties strongly contest what available financial and other documents have been exchanged, the parties can utilize discovery tools under the Civil Practice Act and seek relief from the Court if and as necessary." *See* Order on Pending Motions, p. 8 n. 2. In light of the discovery requests served and arguments made related to the instant motion, the Court is compelled to note that its instruction in footnote 2 was not a ruling that all materials sought through the Motion for TRO would be discoverable. Rather, upon finding that Plaintiffs had not met their burden to sustain the Motion for TRO, the Court noted that the parties may nevertheless use discovery tools to seek some of the requested materials and, if a dispute regarding production as to particular materials were to arise, parties could present the dispute to the Court and seek relief as appropriate.

Documents to Defendant Kevin Taylor served on May 24, 2018 (to which Kevin Taylor had failed to respond as of the filing of Plaintiffs' motion);

4. Plaintiff Nancy Johnson's First Continuing Request for Production of Documents to Defendant Nicole Taylor served on May 24, 2018 (to which Nicole Taylor had failed to respond as of the filing of Plaintiffs' motion);
5. Plaintiff Nancy Johnsons' Non-Party Request for Production of Documents to Welcome to Paradise, LLC served on May 24, 2018 (to which WTP had failed to respond as of the filing of Plaintiffs' motion);
6. The CRUT's First Continuing Request for Production of Documents to Defendant Kevin Taylor, served on June 6, 2018 (to which Kevin Taylor had failed to respond as of the filing of Plaintiffs' motion);
7. The CRUT's First Continuing Request for Production of Documents to Defendant Nicole Taylor, served on June 6, 2018 (to which Nicole Taylor had failed to respond as of the filing of Plaintiffs' motion);
8. The Family Foundation's First Continuing Request for Production of Documents to Defendant Kevin Taylor, served on June 6, 2018 (to which Kevin Taylor had failed to respond as of the filing of Plaintiffs' motion);
9. The Family Foundation's First Continuing Request for Production of Documents to Defendant Nicole Taylor, served on June 6, 2018 (to which Nicole Taylor had failed to respond as of the filing of Plaintiffs' motion);
10. DNJ's First Continuing Request for Production of Documents to Defendant Kevin Taylor, served on June 6, 2018 (to which Kevin Taylor had failed to respond as of the filing of Plaintiffs' motion);
11. DNJ's First Continuing Request for Production of Documents to Defendant Nicole Taylor, served on June 6, 2018 (to which Nicole Taylor had failed to respond as of the filing of Plaintiffs' motion).

("RPDs 1-11" respectively).

On June 25, 2018, Defendants moved the Court for a thirty day extension of the time to respond to all then pending discovery requests. Plaintiffs consented to the extension so long as all responsive documents were produced by July 26, 2018. Thus, on June 29, 2018, this Court entered an Order Granting Defendants' Motion to Extend Time to Respond to Plaintiffs' Discovery Requests which expressly states:



This action currently appears before this Court on Defendants' motion to extend the time to respond to Plaintiffs' discovery requests, which was filed with this Court on June 25, 2018, seeking a thirty (30) day extension of time to respond to the Plaintiffs' discovery requests served to-date. Based upon the Defendants' representation that all requested documents would be produced within the thirty (30) day extension, Plaintiffs consented to the motion. Therefore, IT IS HEREBY ORDERED that Defendants' motion should be and hereby is GRANTED. Defendants shall have through and including July 26, 2018 to produce all requested documents.<sup>4</sup>

Nevertheless, although Defendants timely submitted responses to Plaintiff Shannon Johnson's First RPDs to Kevin Taylor and Nicole Taylor and submitted various objections to non-party RPDs (discussed in Parts C and D, *infra*), it appears that Defendants and WTP failed to respond to RPDs 3-11 listed above by July 26, 2018. Instead, on September 7, 2018, after the instant motion was filed, Defendants submitted responses to various outstanding RPDs, therein asserting various objections to certain requests and as to other requests generally referring Plaintiffs to a "Dropbox link" and eighty-two boxes located in a storage facility which allegedly contain documents responsive to Plaintiffs' requests. On September 7, 2018, Defendants also filed a response to Plaintiffs' motion, indicating, *inter alia*, that "[w]ritten responses to all 14-discovery request[s] will be produced by October 30, 2018."<sup>5</sup> The Court finds Defendants' discovery responses deficient.

"A party's failure to object to a discovery request within the time required generally will result in a waiver of the right to object." Kennestone Hosp. v. Hopson, 273 Ga. 145, 146, 538 S.E.2d 742, 743 (2000). See Ale-8-One of Am., Inc. v. Graphicolor Servs., Inc., 166 Ga. App. 506, 508, 305 S.E.2d 14, 16 (1983) (by failing to file any answer or objection to interrogatories

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<sup>4</sup> The foregoing order was ultimately approved via email by all counsel of record, who also agreed that if issues regarding the availability of certain requested documents became an issue, the parties would address the matter at that time.

<sup>5</sup> Defendants' Response to Motion to Compel and Response to Motion for Expedited Response Time and Expedited Hearing, ¶2.

within thirty days permitted for answering, defendant waived its right to object to the interrogatories); Drew v. Hagy, 134 Ga. App. 852, 852, 216 S.E.2d 676, 677 (1975) (“Failure to file timely objections to [a discovery request] is a waiver of the right to object”). However, such waiver does not necessarily constitute the waiver of a privilege otherwise held and asserted by the non-responsive party. See Kennestone Hosp. v. Hopson, 273 Ga. at 148–49 (“Ordinarily, silence is insufficient to establish a waiver [in the context of analyzing whether a privilege from discovery continues to apply] unless there is an obligation to speak”; finding failure to timely object to discovery of psychiatric records insufficient to infer intent to waive psychiatrist-patient privilege).

Here, insofar as Defendants failed to timely respond to RPDs 3-11 listed above, they have generally waived their right to object to the requests contained therein. However, such an implied waiver does not constitute an affirmative waiver of any attorney-client or accountant-client privilege held by Defendants. Accordingly, the Court deems Defendants and WTP to have waived any objections to RPDs 3-11 listed above, other than with respect to any asserted attorney-client and accountant-client privilege, and orders them to supplement their production with all non-privileged, responsive documents in their possession, custody, or control within fifteen days of entry of this order.<sup>6</sup> To any extent a privilege is asserted, the party invoking the privilege should provide a privilege log that substantially complies with Uniform Superior Court Rule 5.5

Given the Court’s ruling above and for the reasons further discussed in Parts C and D(1) related to the assertion of the attorney-client and accountant-client privilege, the Court declines

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<sup>6</sup> The Court cautions Defendants that the parameters of the attorney-client and accountant-client privilege are limited and are summarized in Parts B and C(1), *infra*. The frivolous assertion of a privilege may result in discovery sanctions.



to order Defendants to provide waivers to FisherBroyles and Brooks Cook regarding the non-party RPDs served upon those entities.

***(2) Organization of Defendants' Document Production***

Additionally, the Court finds Defendants' general reference to a Dropbox link and to eighty-two boxes of documents in response to specific documents requests<sup>7</sup> does not satisfy Defendants' discovery obligations under the Civil Practice Act to provide a complete and sufficiently organized production of responsive documents. See Hull v. WTI, Inc., 322 Ga. App. 304 (2013) (where the trial court held that "the production of over 156,000 pages of documents with insufficient organization, coupled with the failure...to identify which documents are responsive to which...requests...is inconsistent with [the defendant's] obligations under the Civil Practice Act."). Thus, Defendants are hereby ordered to amend and supplement their production accordingly within fifteen days of entry of this order including, to the extent they have not already done so, organizing their production to specifically identify through Bates numbering or otherwise which documents produced are responsive to which discovery requests and, if no responsive documents exist, affirmatively stating so. Again, as to any responsive documents withheld on the basis of an asserted privilege, the party invoking the privilege must produce a privilege log that substantially complies with Uniform Superior Court Rule 5.5.

***(3) Authorization to Merrill Lynch to Allow Access to DNJ's Accounts***

Plaintiffs request that Defendant Kevin Taylor be required to provide Merrill Lynch with a signed authorization form to allow Nancy Johnson access to bank records for DNJ. Notably, DNJ is owed by the CRUT, of which Nancy Johnson is the Trustee. Although Kevin Taylor

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<sup>7</sup> See, e.g., Defendants' Responses to Plaintiff Shannon Johnson's First Request for Production of Documents to Defendants Kevin Taylor and Nicole Taylor, RPD Nos. 1-14.

previously served as DNJ's manager, Plaintiffs assert Nancy Johnson terminated him from the position on Apr. 21, 2017. Defendants advance no substantive argument or rationale for opposing this specific request and merely state "Defendants will not provide authorization to Merrill Lynch so that Nancy Johnson can access the DNJ bank records."<sup>8</sup> Having considered the record, the Court orders Defendant Kevin Taylor to, within fifteen days of entry of this order, provide Plaintiffs' counsel the signed authorization required by Merrill Lynch to allow the CRUT/Nancy Johnson access to DNJ's bank records.<sup>9</sup>

***(4) Specific objections***

According to their responses to Plaintiff Shannon Johnson's First Request for Production of Documents to Defendants Kevin Taylor and Nicole Taylor, Defendants objected to RPD Nos. 2, 4, and 6-10.

*i. RPD No. 2*

Plaintiffs seek all documents relating to agreements and understandings between WTP and/or the DJ Trust on the one hand and various entities allegedly affiliated with Defendants on the other, including Eastbeck Wealth Management, LLC ("Eastbeck"). Defendants object to the production of all documents concerning Eastbeck as irrelevant to this litigation. However, insofar as the management and finances of WTP and the DJ Trust are issue in this action as well as the relationship between these entities, the parties, and other entities affiliated with the parties, including Eastbeck, the Court finds the relationship between WTP/DNJ and Eastbeck relevant and that RPD No. 2 is reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Defendants are ordered to respond to RPD No. 2 with any responsive, non-

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<sup>8</sup> Defendants' Response to Motion to Compel and Response to Motion for Expedited Response Time and Expedited Hearing, ¶5.

<sup>9</sup> See Plaintiffs' Certificate Pursuant to Uniform Superior Court Rule 6.4 (dated Aug. 20, 2018), Exhibit 5.

privileged documents in their custody, possession or control or affirmatively advise that no such documents exist within fifteen days of entry of this order.

*ii. RPD Nos. 4, 6, 7, 8, 9, and 10*

In RPD Nos. 4 and 6-10, Plaintiffs seek various documents related to the finances and management of WTP, the DJ Trust, DGMH, the parties and various entities and affiliates allegedly related to the parties:

**RPD No. 4:** Please produce all of the bank records, including without limitation all bank statements, canceled checks, online transfer details, signature cards, and deposit and detail items for the period January 1, 2009 through the present, for every account bank or investment account in the name of or containing money belonging to the DJ Trust or WTP...

**RPD No. 6:** Please produce a copy of all original bank and credit cards that are in the name of WTP, DGMH, or the DJ Trust.

**RPD No. 7:** Please produce all documents evidencing any assets that are/were owned currently and/or in the past by WTP, DGMH, and/or the DJ Trust including without limitation all assets that belonged to WTP as of January 1, 2009 and all assets owned today.

**RPD No. 8:** Please produce all documents evidencing any loans to WTP, DGMH, and/or the DJ Trust from any party to this action, You, Dennis Johnson, Nancy Johnson, the DJ Trust, WTP, DGMH, or third parties from January 1, 2009 and continuing through today.

**RPD No. 9:** Please produce all documents evidencing any loans from WTP, DGMH, and/or the DJ Trust to any party to this action, You, Dennis Johnson, Nancy Johnson, the DJ Trust, WTP, DGMH, or third parties from January 1, 2009 and continuing through today.

**RPD No. 10:** Please produce all financial and contract documents referencing WTP, DGMH, and/or the DJ Trust including without limitation, a native copy of QuickBooks, all credit card statements, contracts, leases, liquor licenses, business licenses, permits, all deposit detail items, online transfer details, vendor contracts and reports, receipts,

and communications with tax and financial professionals from January 1, 2009 to present.

Subject to the assertion of any privilege (as further discussed in Parts B(1), C, and D(1)) and for the reasons discussed above, the Court finds the foregoing requests relevant and reasonably calculated to lead to the discovery of admissible evidence. In their amended responses to each of the foregoing RPDs, “Defendants retract[] the objection to the production of documents that are irrelevant or outside the scope of this matter” but it is unclear whether non-privileged, responsive documents have now been provided. To the extent they have not, Defendants are ordered to fully respond to these discovery requests with any non-privileged, responsive documents in their custody, possession or control or affirmatively advise that no such documents exist within fifteen days of entry of this order.

***(5) Request to Require Response to Plaintiffs’ counsel’s good faith letter***

Given prior communications among counsel and the current posture of this case and in light of the Court’s rulings herein, the Court declines to order Defendants to respond to Plaintiffs’ good faith letter dated August 6, 2018.

**(6) Conclusion**

Plaintiffs’ Motion to Compel is GRANTED IN PART and DENIED IN PART as set forth above. Upon the parties’ compliance with this order, counsel is directed to meet and confer in good faith as to any remaining discovery dispute prior to seeking further relief from the Court. The Court will reserve ruling on Plaintiffs’ request for attorney’s fees and expenses related to this motion.

**C. MOTIONS CONCERNING DISCOVERY REQUESTS SERVED UPON NON-PARTY FISHERBROYLES**

***(1) Motions Regarding First RPD to FisherBroyles***

Plaintiffs have filed a Motion to Compel Non-Party Responses, seeking to compel the production of documents by non-party FisherBroyles, LLC (“FisherBroyles”) of documents related to its alleged legal representation of the CRUT, DNJ, and the Family Foundation. At issue are five discovery requests contained in Plaintiffs’ Request for Production of Documents to Non-Party FisherBroyles, LLP (“First FisherBroyles RPD” and “First FisherBroyles RPD Nos. 1-5”, respectively).<sup>10</sup>

FisherBroyles opposes the motion, asserting it has never represented the CRUT, DNJ, or the Family Foundation. Additionally, it raises a variety of objections to the requests and asserts the requested documents are protected from disclosure by the attorney-client privilege and the attorney work product doctrine. Defendants generally object to the First FisherBroyles RPD on the same grounds. FisherBroyles has also cross moved for the imposition of sanctions against Plaintiffs and their counsel in connection with the instant motion under O.C.G.A. §§ 9-15-14 and 9-11-37(a)(4)(B).

The parties and FisherBroyles’ filings related to this motion largely center on issues regarding the assertion of the attorney-client privilege and the work product doctrine. Notably,

the purpose of the work-product doctrine is different from that of the attorney-client privilege. While the attorney-client privilege is intended to protect the attorney-client relationship by protecting communications between clients and attorneys, the work-product doctrine directly protects the adversarial system by allowing attorneys to prepare cases without concern that their work will be used against their clients.

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<sup>10</sup> Plaintiffs’ Certificate Pursuant to Uniform Superior Court Rule 6.4 (Aug. 20, 2018), Exhibit 3; Plaintiffs’ Certificate Pursuant to Uniform Superior Court Rule 6.4 (dated Aug. 27, 2018), Exhibit A. Although the FisherBroyles RPD includes requests related to other entities, insofar as Plaintiffs’ motion is directed at the production of documents related specifically to the CRUT, DNJ, and the Family Foundation and RPD Nos. 1-5, the Court will limit its review to those discovery requests as they relate only to those entities.

McKesson HBOC, Inc. v. Adler, 254 Ga. App. 500, 503, 562 S.E.2d 809, 813 (2002) (citing Westinghouse Elec. Corp. v. Republic of the Philippines, 951 F.2d 1414, 1427–1428 (3rd Cir.1991)).

With respect to the attorney-client privilege,

[it] is “the oldest of the privileges for confidential communications known to the common law.” Upjohn Co. v. United States, 449 U.S. 383, 389(II), 101 S.Ct. 677, 66 L.Ed.2d 584 (1981). The privilege has long been recognized in Georgia, see Fire Ass’n of Philadelphia v. Fleming, 78 Ga. 733(3), 3 S.E. 420 (1887), and is currently codified as follows: “There are certain admissions and communications excluded from evidence on grounds of public policy, including ... [c]ommunications between attorney and client.” O.C.G.A. § 24-5-501(a)(2). The privilege generally attaches when legal advice is sought from an attorney, and operates to protect from compelled disclosure any communications, made in confidence, relating to the matter on which the client seeks advice. Paul S. Milich, *Georgia Rules of Evidence*, § 21:1, at 849 (2012–2013 ed.). The purpose of the privilege is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client. Upjohn Co., 449 U.S. at 389, 101 S.Ct. 677. However, because recognition of the privilege operates to exclude evidence and thus impede the truth-seeking process, the privilege is narrowly construed. Tenet Healthcare Corp. v. Louisiana Forum Corp., 273 Ga. 206(1), 538 S.E.2d 441 (2000).

St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C., 293 Ga. 419, 421–22, 746 S.E.2d 98, 103 (2013) (footnote omitted). The privilege attaches where: (1) there is an attorney-client relationship; (2) the communications in question relate to the matters on which legal advice was sought; (3) the communications have been maintained in confidence; and (4) no exceptions to the privilege are applicable. See id. at 423 (citing Milich, §21 at 849-50, 856, 871-75; S. Guar. Ins. Co. of Georgia v. Ash, 192 Ga. App. 24, 27, 383 S.E.2d 579, 582 (1989)). See also Georgia Cash Am., Inc. v. Strong, 286 Ga. App. 405, 413, 649 S.E.2d 548, 555 (2007) (“[A party’s] suggestion that the fact that an attorney might have reviewed or commented upon a



document automatically protects the document under the attorney-client privilege is unsupported by any authority and, in fact, conflicts with prior opinions by this Court”); McKesson HBOC, Inc., 254 Ga. App. at 502–03 (“To the extent a communication is made for the purpose of disclosure to a third party, it is not protected by the attorney-client privilege in Georgia”) (citing Tenet Healthcare Corp. v. Louisiana Forum Corp., 273 Ga. 206, 209, 538 S.E.2d 441, 445 (2000)).

As to the work product doctrine, O.C.G.A. §9-11-26(b)(3) provides:

Subject to paragraph (4) of this subsection [related to expert discovery], a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

“‘Opinion work product’ has been described as including such items as an attorney's legal strategy, intended lines of proof, evaluation of the case's strengths and weaknesses, and the inference drawn from interviews of witnesses.” McKinnon v. Smock, 264 Ga. 375, 381 n. 2, 445 S.E.2d 526, 530 (1994) (citing Sporck v. Peil, 759 F.2d 312, 316 (3rd Cir.1985)). Importantly, the burden of establishing the existence of a privilege rests on the party asserting the privilege. *See Georgia Cash Am., Inc.*, 286 Ga. App. at 412; Gen. Motors Corp. v. Conkle, 226 Ga. App. 34, 46, 486 S.E.2d 180, 191 (1997). Applying the foregoing authorities, the Court addresses each disputed discovery request in turn below.

*i. First FisherBroyles RPD No. 1*

First FisherBroyles RPD No. 1 states in relevant part:

Please produce all emails with any person, attorney notes, and other documents in your possession **related to your representation of Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, the Nancy Johnson Family Trust, the Dennis Johnson Family Trust, The Dennis and Nancy Johnson Charitable Remainder Unitrust, DNJ Investments, LLC, and The Dennis L. and Nancy S. Johnson Family Foundation, Inc.**

FisherBroyles repeatedly and affirmatively asserts it has only previously represented: **Kevin Taylor** (i) individually, (ii) as trustee of the Nancy Johnson Family Trust, (iii) as trustee of the Dennis Johnson Family Trust, and (iv) individually in his capacity as an employee of the Dennis and Nancy Johnson Charitable Remainder Unitrust, and the Dennis and Nancy Johnson Family Foundation; **Nicole Taylor**, (i) individually, (ii) as trustee of the Nancy Johnson Family Trust, (iii) as trustee of the Dennis Johnson Family Trust, (iv) as Guardian and Conservator of her father in a Cobb County Probate proceeding; and **Welcome to Paradise, LLC**. Further, FisherBroyles affirmatively asserts that it has never represented in any capacity the CRUT, DNJ, or the Family Foundation. Given this affirmative representation and absent evidence to the contrary, to the extent Plaintiffs seek to compel the production of materials “related to [FisherBroyles’] representation” of the CRUT, DNJ or the Family Foundation, it would appear there is nothing for the Court to compel to be produced. Further, to the extent Plaintiffs seek information regarding the CRUT, DNJ, or the Family Foundation from client files or communications regarding FisherBroyles’ former legal representation of Defendants, such would be protected from disclosure pursuant to the attorney-client privilege. The Motion to Compel is DENIED as to First FisherBroyles RPD No. 1.

*ii. First FisherBroyles RPD No. 2*

First FisherBroyles RPD No. 2 states:

Please produce a complete copy of your file related to your **representation of** Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, the Nancy Johnson Family Trust, the Dennis Johnson Family Trust, **The Dennis and Nancy Johnson Charitable Remainder Unitrust, DNJ Investments, LLC, and The Dennis L. and Nancy S. Johnson Family Foundation, Inc.** as it is kept by you. If you remove any documents from the file before production, please produce a privilege log.

Although Plaintiffs take the position that they are merely seeking the production of their own client files, as noted above, FisherBroyles affirmatively asserts that it has never represented in any capacity the CRUT, DNJ, or the Family Foundation. Again given this affirmative representation and absent evidence to the contrary, there would logically be no client “file” related to the CRUT, DNJ, or the Family Foundation to produce. The Motion to Compel is DENIED as to First FisherBroyles RPD No. 2.

*iii. First FisherBroyles RPD No. 3*

First FisherBroyles RPD No. 3 states:

Please produce all documents **related to your receipt of payments** from Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, the Nancy Johnson Family Trust, the Dennis Johnson Family Trust, **The Dennis and Nancy Johnson Charitable Remainder Unitrust, DNJ Investments, LLC, and The Dennis L. and Nancy S. Johnson Family Foundation, Inc., including** without limitation **a copy of your invoices** that were paid by Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, the Nancy Johnson Family Trust, the Dennis Johnson Family Trust, The Dennis and Nancy Johnson Charitable Remainder Unitrust, DNJ Investments, LLC, and The Dennis L. and Nancy S. Johnson Family Foundation, Inc.

Having considered the record, the request and FisherBroyles’ and Defendants’ objections, the Court finds materials regarding the receipt of payments by FisherBroyles from the CRUT, DNJ, and the Family Foundation, including invoices paid by those entities, are relevant and are not automatically privileged. *See Crews v. Wahl*, 238 Ga. App. 892, 898, 520 S.E.2d 727, 732

(1999) (“Absent special circumstances, disclosure of the identity of the client and fee information stand on a footing different from communications intended by a client to explain a problem to a lawyer in order to obtain legal advice”) (citing In re Shargel, 742 F.2d 61, 63 (2nd Cir.1984)).

Thus, the Motion to Compel is GRANTED in part as to First FisherBroyles RPD No. 3 and FisherBroyles is ordered to produce responsive, non-privileged materials in its possession or advise that no such responsive documents exist within fifteen days of entry of this order. To the extent FisherBroyles deems particular responsive documents or matters contained therein to be privileged, it should submit an appropriate privilege log as otherwise there is no way for the other parties and the Court to assess the privilege as asserted with respect to particular documents being withheld. *See generally* O.C.G.A. §9-11-34(c) (regarding the request for the production of documents from non-parties); Ga. Unif. Super. Ct. R. 5.5 (regarding the assertion of privilege or protection as trial preparation material).<sup>11</sup>

*iv. First FisherBroyles RPD Nos. 4-5*

First FisherBroyles RPD Nos. 4-5 state:

Please produce all documents **related to all potential buyers for Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, DNJ Investments, LLC, or The Dennis L. and Nancy S. Johnson Family Foundation, Inc.** including without limitation the potential buyer of Welcome to Paradise, LLC who was disclosed by you to counsel in or about 2017, including without limitation all emails with Kevin Taylor or Nicole Taylor related to same...

Please produce all documents **related to any and all business valuations completed in whole or in part of** Welcome to Paradise, LLC, Dothan

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<sup>11</sup> Additionally, to the extent Plaintiffs assert their status as beneficiaries of the Nancy Johnson Family Trust and the Dennis Johnson Family Trust (which owns Welcome to Paradise, LLC, which allegedly owns Dothan Guest Management Holdings, LLC) entitles them to documents under O.C.G.A. §53-12-243, the Court notes that the foregoing Code Section does not waive expressly or impliedly waive the attorney-client privilege and Georgia courts have not yet recognized a fiduciary exemption to the privilege. *See generally St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*, 293 Ga. 419, 427, 746 S.E.2d 98, 107 (2013).

Guest Management Holdings, LLC, **DNJ Investments, LLC, or The Dennis L. and Nancy S. Johnson Family Foundation, Inc.**, including without limitation, all emails, notes, backup documentation, and reports related thereto with either Nicole Taylor, Kevin Taylor, and any person or entity performing the valuations.

Having considered the record, the requests and FisherBroyles' and Defendants' objections, the Court finds materials related to potential buyers for DNJ and the Family Foundation and business valuations of those entities, to the extent any such materials exist, are relevant, generally discoverable and not protected wholesale from disclosure under the attorney-client privilege or work product doctrine. However, as discussed above, privileged communications between FisherBroyles and its clients, Defendants Kevin Taylor and Nicole Taylor, regarding matters on which legal advice was sought, would be protected from disclosure under the attorney-client privilege. *See St. Simons Waterfront, LLC*, 293 Ga. at 423; *S. Guar. Ins. Co. of Georgia*, 192 Ga. App. at 27. Further, materials containing the mental impressions, conclusions, opinions, or legal theories of FisherBroyles as counsel for Defendants concerning litigation are similarly protected from disclosure under the work product doctrine as outlined above. *See* O.C.G.A. §9-11-26(b)(3).

Thus, the Motion to Compel is GRANTED, IN PART, as to First FisherBroyles RPD Nos. 4 and 5 as described above and FisherBroyles is ordered to produce responsive, non-privileged materials in its possession or advise that no such responsive documents exist within fifteen days of entry of this order. To the extent FisherBroyles deems particular responsive documents to be privileged, it should submit an appropriate privilege log as otherwise there is no way for the other parties and the Court to assess the privilege as asserted with respect to particular documents being withheld. *See generally* O.C.G.A. §9-11-34(c); Ga. Unif. Super. Ct.

R. 5.5.<sup>12</sup>

**(2) Plaintiffs' Motion to Compel Non-Party FisherBroyles, LLP's Response to Second Request for Production of Documents**

On August 22, 2018, Plaintiffs served FisherBroyles with Plaintiffs' Second Request for Production of Documents to Non-Party FisherBroyles ("Second FisherBroyles RPD") which includes three document requests ("Second FisherBroyles RPD Nos. 1-3", respectively).<sup>13</sup> FisherBroyles objects to the document requests are various grounds.<sup>14</sup>

*i. Second FisherBroyles RPD No. 1*

In this discovery request, Plaintiffs request "all evidence of payments received from Dennis Johnson, and/or Shannon Johnson, and/or Nancy Johnson." FisherBroyles generally objects to the request, asserting that it is, *inter alia*, overly broad, duplicative, unduly burdensome, not limited in time, not relevant, not reasonably calculated to lead to the discovery of admissible evidence, protected by the attorney-client privilege between FisherBroyles and its former client, WTP, and is subject to the attorney work product privilege. Subject to its objections, FisherBroyles asserts it "is not in possession, custody, or control of any evidence of any payments received from Nancy Johnson, Dennis Johnson, or Shannon Johnson."

The Court finds the request is reasonably narrow, seeks documents covering the period of January 1, 2011, through the present, and is reasonably calculated to lead to the discovery of admissible evidence. Further, as held in Part C(1)(iii), *supra*, information regarding fee payments are not protected wholesale from disclosure under the attorney-client privilege. *See Crews*, 238

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<sup>12</sup> See also note 11, *supra*.

<sup>13</sup> Plaintiffs' Motion to Compel Non-Party FisherBroyles, LLP's Response to Second Request for Production of Documents, Exhibit 1. Although, as noted by FisherBroyles, Plaintiffs failed to certify compliance with Uniform Superior Court Rule 6.4 prior to filing this motion, in light of the ongoing dispute regarding the assertion and scope of the attorney-client privilege in this litigation, given the briefings submitted, and in an effort to assist the parties in resolving their discovery disputes, the Court addresses Plaintiffs' motion below.

<sup>14</sup> Plaintiffs' Motion to Compel Non-Party FisherBroyles, LLP's Response to Second Request for Production of Documents, Exhibit 2.



Ga. App. at 898. Moreover, the Court cannot discern how “evidence of payments” made by non-clients would be subject to the attorney-client privilege or would be protected under the work product doctrine.

To the extent FisherBroyles asserts no responsive materials are within its possession, custody or control, Plaintiffs have attached to their motion a check drawn from what appears to be the Merrill Lynch/Bank of America account of Dennis L. Johnson and Nancy S. Johnson made out to “FSB” and a document indicating a wire transfer from the Merrill Lynch account of Dennis L. Johnson and Nancy S. Johnson transferred to an “FSB Fisher Broyles” Wachovia Bank account.<sup>15</sup> Although in its response brief FisherBroyles asserts the documents attached to Plaintiffs’ motion “simply demonstrate payments made to FisherBroyles on account of WTP”, they appear on their face to be responsive to Second FisherBroyles RPD No. 1 as they appear to represent payments made by the Johnsons to FisherBroyles that do not contain privileged/protected information. Given the foregoing, FisherBroyles is directed to again search for responsive documents and produce same or certify that no responsive documents are within its possession, custody, or control within fifteen days of entry of this order.

*ii. Second FisherBroyles RPD No. 2*

In this discovery request, Plaintiffs request “all emails and other communications with Dennis Johnson, and/or Shannon Johnson, and/or Nancy Johnson.” FisherBroyles raised the same general objections as with Second Fisher Broyles RPD No. 1 and further objects to the extent the materials sought are protected by the attorney-client privilege between FisherBroyles and its former client, WTP, and are subject to the attorney-work product privilege. Subject to its stated objections, FisherBroyles produced fourteen pages of “non-privileged”, responsive

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<sup>15</sup> Plaintiffs’ Motion to Compel Non-Party FisherBroyles, LLP’s Response to Second Request for Production of Documents, Exhibit 4.

documents.

Construing relevance broadly (Bowden, 297 Ga. at 291) and given the allegations made in this litigation, the Court finds the requested information discoverable and at least reasonably calculated to lead to the discovery of admissible evidence. The Court cannot discern and FisherBroyles does not explain how communications with non-clients Dennis Johnson, Shannon Johnson, and Nancy Johnson would be subject to the attorney-client privilege or would be protected under the work product doctrine. *See McKesson HBOC, Inc.*, 254 Ga. App. at 502–03. Further, FisherBroyles’ assertion that only “non-privileged”, responsive documents have been produced at least suggests that responsive documents may exist regarding which FisherBroyles/their former clients assert a privilege. Without a privilege log, the Court cannot assess the privilege being asserted as to particular documents and the Court simply cannot automatically and broadly brush all communications and documents involving a law firm as being protected from disclosure. Thus, FisherBroyles is directed to supplement its discovery responses in light of the Court’s rulings herein, supplement its production as appropriate, and provide a privilege log to the extent it maintains responsive documents in its possession, custody, or control are protected from disclosure.

iii. *Second FisherBroyles RPD No. 3*

In this discovery request, Plaintiffs request “all documents contained in all files opened on behalf of Dennis Johnson, and/or Shannon Johnson, and/or Nancy Johnson.” Although FisherBroyles asserts the same general objections as asserted with respect to Second FisherBroyles RPD Nos. 1-2, including on attorney-client and work product grounds, it also unequivocally states in its response that “FisherBroyles is not in possession, custody, or control of any files opened on behalf of Dennis Johnson, and/or Shannon Johnson, and/or Nancy

Johnson.” Given this affirmative representation, there is nothing for the Court to compel with respect to this discovery request.

### **(3) Requests for Attorneys’ Fees or Sanctions**

Given the Court’s rulings above, the Court declines to award Plaintiffs or FisherBroyles any attorney’s fees and expenses or to otherwise impose a sanction related to their discovery dispute.

## **D. OBJECTIONS REGARDING OTHER DISCOVERY REQUESTS SERVED UPON NON-PARTIES<sup>16</sup>**

### ***(1) Discovery Requests Regarding Non-Party Brooks Cook & Associates, LLC***

Plaintiffs have served a Request for Production of Documents to Non-Party Brooks Cook & Associates, LLC (“Brooks Cook RPD”), a public accounting firm with licensed public accountants who have rendered accounting services to: WTP; DGMH; the CRUT; and the Family Foundation.<sup>17</sup> The Brooks Cook RPD requests the production of certain documents related to the foregoing entities.

Brooks Cook has advised that it will produce the requested materials in its possession relating to the CRUT and the Family Foundation. However, Brooks Cook considers the materials in its possession relating to WTP and DGMH to be subject to the accountant/client privilege under O.C.G.A. §43-3-32 such that producing the requested materials would violate the privilege

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<sup>16</sup> The Court is compelled to note that as to each of Defendants’ objections to discovery requests served upon non-parties wherein Defendants moves the Court to “quash” or otherwise deny production from non-parties (discussed *infra*), Defendants have failed to certify their compliance with Uniform Superior Court Rule 6.4, requiring conferral among counsel prior to filing a motion seeking resolution of a discovery dispute. Nevertheless, in an effort to assist the parties with resolving these discovery disputes, the Court addresses Defendants’ objections, in turn, below.

<sup>17</sup> Brooks Cook asserts it has never been engaged to represent DNJ Investments, LLC. See Objection of Non-Party Brooks Cook & Associates, LLC to Plaintiffs’ Request for Production of Documents to Non-Party Brooks, Cook & Associates, LLC, ¶2.

unless released from such privilege by those entities. Brooks Cook further advises that Defendant Kevin Taylor, as the contact person for Brooks Cook relating to WTP and DGMH, has instructed Brooks Cook that he asserts the accountant-client privilege on behalf of those entities. Brooks Cook urges it cannot produce the requested materials unless or until Kevin Taylor provides a written waiver or the Court enters an order directing Brooks Cook to produce the records and protecting it from such disclosure.

Defendants similarly object to the Brooks Cook RPD and have asserted the accountant-client privilege under O.C.G.A. §43-3-32 on behalf of Defendants, WTP, and DGMH. Defendants move the Court to find the requested materials are protected from disclosure and request that the Brooks Cook RPD be quashed with respect to the foregoing entities.

“Generally, communications between accountants and their clients are privileged and may not be inquired into by a third party absent the client's consent.” Rose v. Commercial Factors of Atlanta, Inc., 262 Ga. App. 528, 529, 586 S.E.2d 41, 42 (2003) (citing O.C.G.A. §43-3-32). The accountant-client privilege is analogous to the privilege between attorney and client. Id.; In re Hall Cty. Grand Jury Proceedings, 175 Ga. App. 349, 350, 333 S.E.2d 389, 391 (1985).

“The purpose of the accountant-client privilege is to insure an atmosphere wherein the client will transmit all relevant information to his accountant without fear of any future disclosure in subsequent litigation. Without an atmosphere of confidentiality, the client might withhold facts he considers unfavorable to this situation thus rendering the accountant powerless to adequately perform the services he renders.”

Roberts v. Chaple, 187 Ga. App. 123, 124, 369 S.E.2d 482, 484 (1988) (citing Gearhart v. Etheridge, 232 Ga. 638, 639, 208 S.E.2d 460 (1974)).

O.C.G.A. §43-3-29 (formerly cited as O.C.G.A. §43-3-32, formerly Code. Ann. §84-220) sets forth the privilege and provides in relevant part:

All communications between a certified public accountant or employee of such certified public accountant acting in the scope of such employment and the person for whom such certified public accountant or employee shall have made any audit or other investigation in a professional capacity and *all information obtained by a certified public accountant or such an employee in his or her professional capacity concerning the business and affairs of clients shall be deemed privileged communications* in all courts or in any other proceedings whatsoever; and no such certified public accountant or employee shall be permitted to testify with respect to any of such matters, except with the written consent of such person or client or such person's or client's legal representative; [with limited exceptions].

O.C.G.A. §43-3-29(b).

Here, the Brooks Cook RPD requests production of various materials, specifically:

**Brooks Cook RPD No. 1:** “[A]ll documents related to Welcome to Paradise, LLC including without limitation all emails and other communication with either Nicole or Kevin Taylor, all tax filings, all drafts, all invoices and payments, and all reports and backup documentation received related to Welcome to Paradise, LLC.”

**Brooks Cook RPD No. 2:** “[A]ll documents related to Dothan Guest Management Holdings, LLC including without limitation all emails and other communication with either Nicole or Kevin Taylor, all tax filings, all drafts, all invoices and payments, and all reports and backup documentation received related to Welcome to Paradise, LLC [sic].”

**Brooks Cook RPD No. 4:** “[A]ll emails and other communication between [Brooks Cook] and either Nicole or Kevin Taylor related to...Dothan Guest Management Holdings, LLC, or Welcome to Paradise, LLC.”<sup>18</sup>

The Court finds the foregoing requests are generally protected from disclosure under the accountant-client privilege pursuant to O.C.G.A. §43-3-29(b). To the extent Plaintiffs assert their status as beneficiaries of the NJ Trust and DJ Trust (which own WTP which allegedly owns DGMH) entitles them to these materials under O.C.G.A. §53-12-243(a),<sup>19</sup> the Court notes that

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<sup>18</sup> Plaintiffs’ Certificate Pursuant to Uniform Superior Court Rule 6.4 (Aug. 20, 2018), Exhibit 3  
<sup>19</sup> O.C.G.A. §53-12-243(a) provides:

the foregoing Code Section does not expressly or impliedly waive the accountant-client privilege and O.C.G.A. §43-3-29 does not set forth any exception to the accountant-client privilege that would authorize disclosure of the requested materials to Plaintiffs. Further, Georgia courts have not yet recognized a fiduciary exemption that would authorize the requested production. *See generally St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*, 293 Ga. 419, 427, 746 S.E.2d 98, 107 (2013). Absent waiver of the privilege by WTP and DGMH's "legal representative" or a legally recognized exception to the accountant-client privilege as it relates to beneficiaries such as Plaintiffs, the privilege bars Brooks Cook for producing the requested materials. Accordingly, Defendants' request to quash the Brooks Cook RPD with respect to materials related to WTP and DGMH is hereby GRANTED and Plaintiffs' request to order further production from Brooks Cook is hereby DENIED.

***(2) Discovery Requests Regarding Non-Party Tiffany Corn***

Plaintiffs previously served a Request for Production of Documents to Non-Party Tiffany Corn ("Corn RPD"), an individual who apparently provided graphic design services to WTP. The Corn RPD seeks: "all documents related to Welcome to Paradise, LLC and Dothan Guest Management Holdings, LLC"; "all invoices, cancelled checks, notes, reports, opinions and receipts to Welcome to Paradise, LLC and Dothan Guest Management Holdings, LLC"; "all emails and correspondence to or from any representative, agent, or employee of Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, Kevin Taylor, Nicole Taylor, or any entity affiliated therewith"; and "all documents related to Kevin Taylor or Nicole Taylor and all

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On reasonable request by any qualified beneficiary, the trustee shall provide the qualified beneficiary with a report of information, to the extent relevant to that beneficiary's interest, about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of such trust, including the trust provisions that describe or affect such beneficiary's interest.



entities affiliated with these individuals.”<sup>20</sup>

Defendants object to the Corn RPD, generally asserting the documents requested are not relevant and that “[t]he subpoena should be quashed” and “move[] the[e] [C]ourt to deny production of [the] documents.”<sup>21</sup> The Court finds the Corn RPD is relevant and reasonably calculated to lead to the discovery of admissible evidence insofar as it seeks documents and information regarding payments made by and services rendered to WTP under the management and direction of Defendants.

Moreover, it appears no subpoena was ever served upon Ms. Corn; rather, she was served with the Corn RPD and has already produced responsive documents such that Defendants’ objection and request to deny the requested production are moot. Accordingly, Defendants requests related to the Corn RPD are DENIED as moot.

### ***(3) Discovery Requests Regarding Non-Party Levin & Riedling, LLC***

Plaintiffs previously served a Request for Production of Documents to Non-Party Levine & Riedling, LLC (“Levine & Riedling RPD”), a law firm that served as Guardian Ad Litem in a Cobb County conservatorship case regarding the now deceased Dennis Johnson. The Levine & Riedling RPD seeks: “all emails with any person, attorney notes, and other documents in [Levine & Riedling’s] possession related to Kevin Taylor, Nicole Taylor, Milo Cogan, Diane Baker, or the Dennis Johnson Conservatorship.”<sup>22</sup> Defendants object to the Levine & Riedling RPD, asserting the documents requested are protected from disclosure by the attorney-client privilege,

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<sup>20</sup> Plaintiffs’ Response to Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party Tiffany Corn, Exhibit A.

<sup>21</sup> Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party Tiffany Corn, p. 2.

<sup>22</sup> Plaintiffs’ Response to Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party Levin & Reidling, LLC, Exhibit A.

and purport to assert the privilege “on behalf of Defendants and such non-party entities.”<sup>23</sup> Defendants further “move[] for th[e] Court to rule that the documents are protected.”<sup>24</sup>

However, “it is axiomatic that the [attorney-client] privilege belongs to the client, not the attorney.” Peterson v. Baumwell, 202 Ga. App. 283, 285, 414 S.E.2d 278, 280 (1991) (citing Gilbert v. State, 169 Ga. App. 383(1), 313 S.E.2d 107 (1984)). It does not appear that Defendants were ever Levine & Riedling’s clients and set forth no basis for asserting the privilege on behalf of any such client. Moreover, it appears Levine & Riedling has already produced responsive documents such that Defendants’ objection and request to deny production are moot. Accordingly, Defendants requests related to the Levine & Riedling RPD are DENIED as moot.

***(4) Discovery Requests Regarding Non-Party Regus Business Centre, LLC, Regus Equity Business Centers, LLC, and Regus Management Group, LLC***

Plaintiffs previously served Requests for Production of Documents to Non-Parties Regus Management Group, LLC, Regus Business Centre, LLC, and Regus Equity Business Centers, LLC (collectively “Regus Entities” and “Regus RPDs” as appropriate). Plaintiffs assert WTP has previously paid rent to the Regus Entities. With respect to each Regus Entity, the Regus RPDs seek: “all documents related to Welcome to Paradise, LLC and Dothan Guest Management Holdings, LLC”; “all invoices, cancelled checks, notes, reports, opinions, and receipts related to Welcome to Paradise, LLC and Dothan Guest Management Holdings, LLC”; “all emails and correspondence to or from any representative, agent, or employee of Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC, Kevin Taylor, Nicole Taylor, or any entity affiliated therewith”; “all documents related to Kevin Taylor or Nicole Taylor and all entities affiliated with these individuals”; and “all documents, including without limitation, all leases signed or

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<sup>23</sup> Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party Levine & Riedling, LLC, p. 2.

<sup>24</sup> Id.

guaranteed by Kevin or Nicole Taylor and all entities affiliated with these [] individuals including without limitation Eastbeck Wealth Management, LLC.”<sup>25</sup>

Defendants object to the Regus RPDs, generally asserting the documents requested are not relevant and that “[t]he subpoena should be quashed” and “move[e] the[e] [C]ourt to deny production of [the] documents.”<sup>26</sup> The Court finds the Regus RPDs are relevant and reasonably calculated to lead to the discovery of admissible evidence insofar as they seek documents and information regarding disbursements made by and leases involving WPT under the management and direction of Defendants.

Moreover, it appears no subpoenas were ever served upon the Regus Entities; rather, they were served with the Regus RPDs, respectively, and have already produced responsive documents such that Defendants’ objection and request to deny production from the Regus Entities are moot. Accordingly, Defendants requests related to the Regus RPDs are DENIED as moot.

***(5) Discovery Requests Regarding Non-Party True I.T., Inc.***

Plaintiffs served a Request for Production of Documents to Non-Party True I.T., Inc. (“True I.T. RPD”). It appears True I.T. previously provided information technology services that were paid for by WTP. The True I.T. RPD seeks: “all documents related to Welcome to Paradise, LLC and Dothan Guest Management Holdings, LLC”; “all invoices, cancelled checks, notes, reports, opinions, and receipts related to Welcome to Paradise, LLC and Dothan Guest Management Holdings, LLC”; “all emails and correspondence to or from any representative, agent, or employee of Welcome to Paradise, LLC, Dothan Guest Management Holdings, LLC,

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<sup>25</sup> Plaintiffs’ Response to Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party Regus Business Centre, LLC, Regus Equity Business Centers, LLC, and Regus Management Group, LLC, Exhibit A.

<sup>26</sup> Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party Regus Business Centre, LLC, Regus Equity Business Centers, LLC, and Regus Management Group, LLC, p. 2.

Kevin Taylor, Nicole Taylor, or any entity affiliated therewith”; and “all documents related to Kevin Taylor or Nicole Taylor and all entities affiliated with these individuals.”<sup>27</sup> True I.T. has not responded to the discovery requests.

Defendants object to the True I.T. RPD, generally asserting the documents requested are not relevant, “are overly broad and unduly burdensome as well as unreasonable and oppressive.”<sup>28</sup> Defendants assert “[t]he subpoena should be quashed” and “move[] the[e] [C]ourt to deny production of [the] documents.”<sup>29</sup>

Again, it appears no subpoena has been served on True I.T., only the True I.T. RPD. The Court finds the True I.T. RPD is relevant and reasonably calculated to lead to the discovery of admissible evidence insofar as it seeks documents and information regarding disbursements made by WTP under the management and direction of Defendants. Further, Defendants’ bare assertion that the discovery requests are “overly broad”, “unduly burdensome”, “unreasonable”, and “oppressive” are insufficient to sustain the requested relief. Given the allegations contained in the pleadings and the various entities at issue, including those affiliated with Defendants, and absent any information regarding the number of documents at issue or other grounds for the assertion that the requests are unreasonably burdensome or oppressive, Defendants’ requests regarding the True I.T. RPD are hereby DENIED.

#### **E. REMAINING DISCOVERY MOTIONS**

On November 16, 2018, Plaintiffs filed a Motion to Compel Production of Documents from the Defendant-Owned Entities. Plaintiffs suggest the motion is ripe “because it pertains to

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<sup>27</sup> Plaintiffs’ Response to Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party True I.T., Inc., Exhibit A.

<sup>28</sup> Defendants’ Objection to Plaintiffs’ Request for Production of Documents to Non-Party, True I.T., Inc., ¶2.

<sup>29</sup> Id. at p. 2.

the Defendants' overall refusal to respond to discovery."<sup>30</sup> However, insofar as the motion involves non-party discovery requests not previously addressed in the parties' previous motions and related briefings and whereas the time to respond to the motion has not expired, the matter is not yet ripe for the Court's consideration.

On November 16, 2018, Plaintiffs also filed a Motion to Extend Discovery, requesting a six-month extension of the discovery period. Defendants are directed to advise the Court within fifteen days of entry of this order if they object to the requested extension.

SO ORDERED, this 17th day of December, 2018.



Melvin K. Westmoreland, Senior Judge  
Fulton County Superior Court  
Business Case Division  
Atlanta Judicial Circuit

**Served upon registered service contacts through eFileGA**

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<sup>30</sup> Plaintiffs' Request for Ruling, p. 2.